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No. 612

In the Supreme Court of the United States

OCTOBER TERM, 1959

HAROLD FRANKLIN CLIFF, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
Argument	5
Conclusion	5

Statute:

Internal Revenue Code of 1939, Sec. 3793(b)(1) (26 U.S.C. 1952 ed., Sec. 3793(b)(1)) 2

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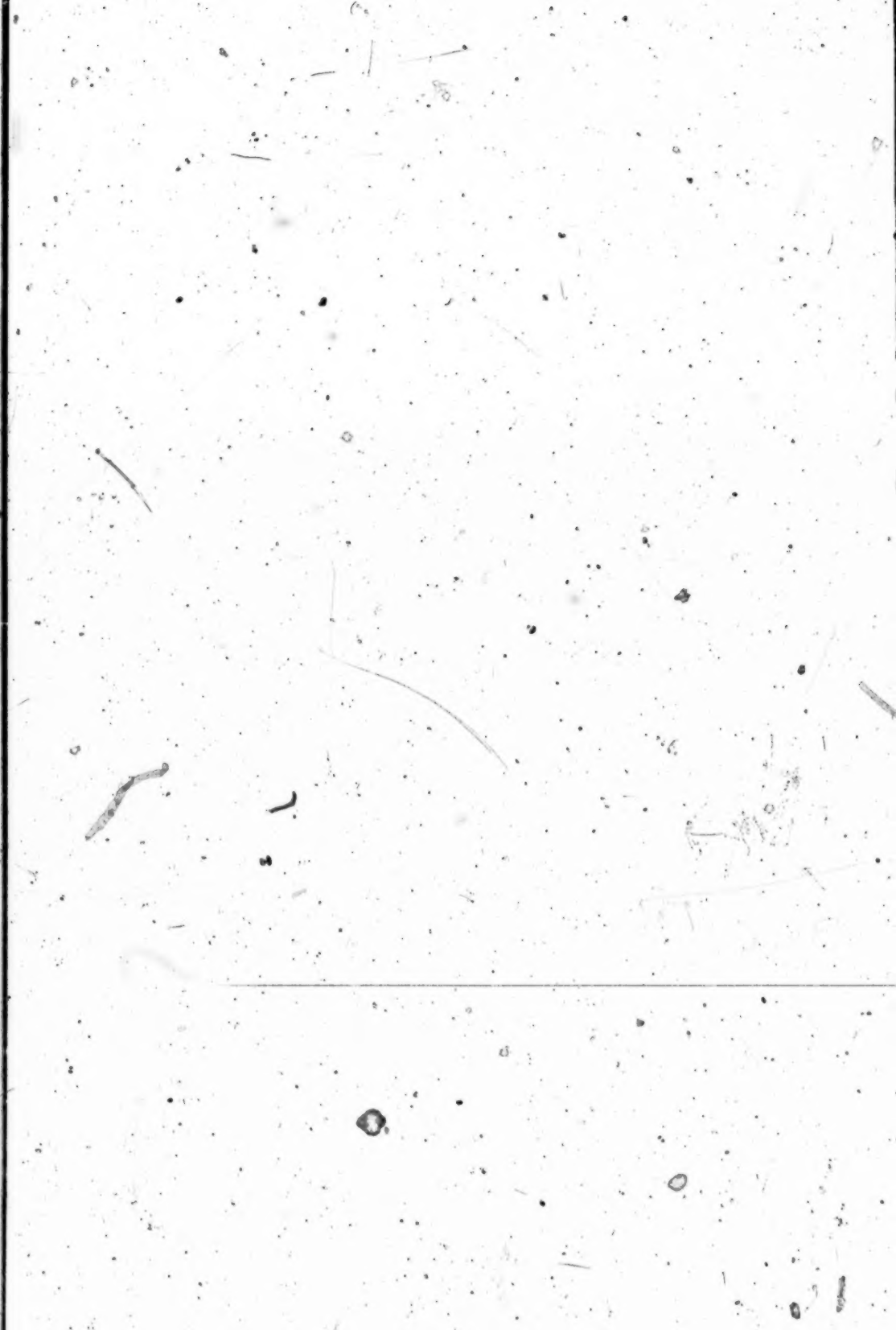

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 10) is reported at 271 F. 2d 126.

JURISDICTION

The judgment of the Court of Appeals was entered on October 30, 1959 (R. 225–226). A petition for rehearing was denied on November 28, 1959 (R. 234). The petition for a writ of certiorari was filed on December 26, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to support the verdict.

STATUTE INVOLVED

Section 3793(b)(1) of the Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.) provides:

> Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

STATEMENT

On October 1, 1952, petitioner was charged in a seven-count indictment—filed in the United States District Court for the Southern District of Florida—with having wilfully aided and assisted in the preparation and presentation of false income tax returns for named taxpayers, fraudulently overstating their deductions in substantial stated amounts, in violation of Section 3793(b)(1) of the Internal Revenue Code of 1939 (R. 1–5). After a jury trial, petitioner was found guilty on four counts (R. 213, 215). On February 6, 1959, a general sentence of one year in prison was imposed (R. 215–216).

The evidence to support the verdict may be summarized briefly as follows:

In January, 1947, petitioner—who was engaged in preparing income tax returns for others—circularized

potential clients with an advertisement containing the statement: "Income tax returns expertly prepared for many thousands, with desired results" (R. 180, 182). One Ellis, who does not appear to have received such a circular, learned about petitioner's tax return services from a friend, who advised him that petitioner "was very good and could save [him] some money" (R. 33). Accordingly, Ellis and his wife called upon petitioner, gave him certain information with respect to their income and deductions, and signed the tax return before it was completed (R. 16, 27–28). The return, as prepared by petitioner and filed, showed a deduction of $1,040.00 for automobile expense, representing $20 a week for 52 weeks. Ellis did not give petitioner that figure, but petitioner said he was entitled to deduct that amount for use of his car in business. The car was a 1932 Chevrolet, and—as Ellis told petitioner at the time he was preparing the return—Ellis' employer was furnishing all of the gasoline, oil and tires. (R. 19, 25, 31.) Petitioner also entered a deduction of $200 for charitable contributions on the return. Ellis told petitioner that he did not know the amount of his contributions, but petitioner advised him that he was entitled to claim a deduction for contributions of 10% of his salary, *i.e.*, $200. (R. 19.)

In preparing the 1946 income tax return of one Holsenbeck, petitioner entered a deduction of $575.00 for automobile expense, although Holsenbeck told him at the time that he had used his car only for personal purposes and driving back and forth

to work (R. 97–98, 101–102, 105). Petitioner also entered deductions of $155 for charitable contributions, although Holsenbeck advised him that his actual contributions totalled between $35 and $50 (R. 96–97).

On the 1946 tax return of one Drummond and his wife the petitioner recorded a deduction of $460 for charitable contributions, although Drummond told him that his contributions would not exceed "$100, or a little over $100 * * *" (R. 36, 39). Also claimed were deductions of $125.00 for theft of tools and $289.00 for "Tools, Equipment and Uniforms" (R. 39). Drummond did not furnish petitioner with either of these figures (R. 40). Although Drummond advised petitioner that he had lost some tools, he did not tell him what their value might be (R. 43).

Mrs. Elizabeth Granger called on petitioner and furnished him with information necessary to prepare the 1946 income tax return of her husband and herself. She testified that Mr. Granger furnished petitioner with no figures. (R. 122, 124–125.) The figures given petitioner for charitable contributions by Mrs. Granger do not appear on the return. Petitioner recorded a deduction of $950.00, which was somewhat higher than the figure Mrs. Granger gave him. (R. 123.) The correct figure was about $150.00 (R. 135). Petitioner also claimed on this return a deduction of $265.50 for "Entertainment of Customers." Mrs. Granger furnished him with no such figure, nor with any information whatsoever relating to entertainment of customers. (R. 123, 126.)

ARGUMENT

The sole question presented by the petition for a writ of certiorari—and on the appeal below—is the sufficiency of the evidence to support the jury's verdict. On that issue it is apparent that on the facts of record summarized above the jury was justified in finding that the numerous "errors" in favor of petitioner's clients did not constitute merely negligence or innocent mistake, but were the product of petitioner's fraud. His attempts (Pet. 7) to depreciate the reliability of the testimony given by the Government's witnesses rest wholly upon considerations which the jury presumably took into account in weighing the evidence. The courts below were plainly right, we submit, in concluding that the verdict of guilty was supported by the evidence.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1960.

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